

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

JAMES D. BABER,

Plaintiff,

vs.

Civ. No. 97-904 MV/WWD

EARTHGRAINS BAKING COMPANIES, INC.,

Defendant.

MEMORANDUM OPINION AND ORDER

This matter comes before the Court upon Plaintiff's Motion for Leave to Amend Complaint and for Remand. The parties have executed a Consent to the Exercise of Jurisdiction by a United States Magistrate Judge, and a Supplemental Order of Reference in connection with that Consent has been entered which limits the Consent to consideration of a pending motion for continuance, and a motion for leave to amend the complaint and for remand. I have entered the Stipulated Order for Continuance.

The Motion for Leave to Amend the Complaint and for Remand.

This motion seeks leave to add certain individuals as parties defendant and to assert claims for punitive damages. Defendant opposes the motion asserting that it is not timely filed. Plaintiff argues that it has only recently discovered information which forms the basis of its second amended complaint, and that to have moved to amend earlier would have violated the requirements of Fed. R. Civ. P. 11.

Discussion.

Most of the practice in the last year in this cause has been in connection with discovery disputes. Extensions of discovery deadlines have been sought and granted. Apparently, neither party is ready for trial at this time. Defendant's argument as to timeliness is well presented, but under the circumstances of this case, particularly, the protracted and contentious discovery practice engaged in by the parties, I am not persuaded that the motion to amend should be denied because of "timeliness". It appears likely that claims against individual defendants must be dealt with in order to address fully the disputes between Plaintiff and Defendant in connection with the termination of their business relationship. Addition of parties defendant who are residents of the State of New Mexico will destroy diversity of citizenship which is the basis for jurisdiction in this Court. This will necessitate remand of this cause to the First Judicial District of the State of New Mexico.

WHEREFORE,

IT IS ORDERED that on or before July 27, 1998, Plaintiff shall file its Second Amended Complaint in the form set out in its motion seeking leave to amend [Docket #82].

IT IS FURTHER ORDERED that the motion to remand portion of the Plaintiff's Motion for Leave to Amend Complaint and for Remand [Docket #82] shall be held in abeyance until the Second Amended Complaint is filed by Plaintiff.


UNITED STATES MAGISTRATE JUDGE